

REMARKSThe Restriction Requirement:

In the Office Action, the Examiner requires an election of a single invention from among the following two allegedly separate and distinct inventions:

the invention of **Group I**; including claims 1-12, drawn to methods comprising applying an effective amount of a compound of the formula (I) to a plant, allegedly classified in class 504, subclass 100, 304 or 323, and

the invention of **Group II**; including claims 13-20, drawn to compounds of formula (I) and compositions comprising such compounds, allegedly also classified in class 504, subclass 100, 304 or 323.

The Examiner contends that the inventions of Group II and Group I are related as a product and a process of use. The Examiner states that inventions are shown to be distinct if either or both of the following can be shown: (1) that the process for using the product, *as claimed*, can be practiced with another materially different product or (2) that the product, *as claimed*, can be used in another materially different process.

The Examiner specifically contends that in the instant application “the process as claimed can be practiced with another materially different product such as applying toxic compounds to plants to induce and enhance the plants own defense mechanism.” (See, the Office Action, p. 3 (*emphasis added*)).

The “Specific Compound” Requirement:

Additionally, the Examiner has required the election of a specific compound. The Examiner has indicated that this requirement is NOT a species election requirement. Although no law, regulation, or guidance from the M.P.E.P. is cited, the Examiner asserts that every single compound encompassed by the formula (I), *i.e.*, substituted benzoic acids and derivatives thereof, constitutes a separate invention. Since this “requirement” is not a species election

requirement, and since there is no supporting law or regulation cited in support of the requirement, Applicants are not certain upon what legal basis the Examiner rests this requirement.

Applicants respectfully submit that this requirement is contrary to well-established, long-standing practice for the examination of chemical applications.

If this is not a species election requirement, Applicants respectfully request that the Examiner set forth in the next official communication a NON-FINAL legal basis for this requirement. Moreover, Applicants expressly reserve the right to respond with specific traversal arguments once the Examiner has set forth a legal basis for this requirement.

Traversal of the Restriction Requirement

Applicants respectfully traverse the Examiner's requirement for restriction and request examination of all pending claims in Groups I and II.

To begin with, Applicants respectfully note that the Examiner has alleged that **BOTH** Group I and Group II are within Class 504, Subclasses 100, 304, and 323. Thus, the Examiner's contention that the inventions have acquired a separate status in the art in view of their different classifications is not understood. Where both Groups are within the same Class/Subclass, no additional search burden is imposed upon the Examiner. For this reason alone, restriction between Group I and Group II is not proper and the Requirement should be withdrawn and examination of all pending claims on the merits should be undertaken.

Moreover, the Examiner has argued, in support of restriction, that it would be possible to practice the method, as claimed, with another materially different product. However, claim 1 specifically refers to compounds of the formula (I) and requires the application of at least one such compound to a plant, etc. Claim 13 is directed to such compounds of formula (I). Thus, while additional OTHER compounds could be used along with a compound of formula (I), it is not seen how one could practice the methods *AS CLAIMED* without a compound of formula (I). Accordingly, the Examiner's basis for requiring restriction is improper. Applicant respectfully requests withdrawal of the restriction requirement.

Provisional Election with Traverse

In the event the Examiner maintains the restriction requirement set forth in the Office Action, Applicants provisionally elect, *with traverse*, the invention of Group I, including claims 1-12, for substantive examination on the merits at this time.

Furthermore, in the event the Examiner insists on maintaining the requirement "to elect a specific compound" (which requirement "is not to be taken as an election of species", *see*, the Office Action, p. 3), Applicants provisionally elect, *with traverse*, a compound of formula (I) where R¹ represents a carboxyl group or a carboxyl derivative, R², R³, R⁴, R⁵ and R⁶ each represent hydrogen, m is 0, n and o are each 1, and Z and Z" each represent oxygen, (*e.g.*, 3,5-dihydroxybenzoic acid), for the sole purpose of providing a complete response and not as a concession limiting the scope of the claims to a single compound.

Respectfully submitted,

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